

THE LAW OFFICES OF SEAN M. MAHER, PLLC

September 1, 2022

VIA ECF

Hon. Philip M. Halpern
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: *United States v. Andrew Smith*, 21 Cr. 574 (PMH)
Sentencing submission of Defendant Andrew Smith

Dear Judge Halpern:

At age 12, Andrew Smith spent hours visiting his father in a hospital as his father was dying of cancer. Andrew was terrified about losing his father; Andrew also was terrified of his father. For years, Andrew's father physically abused Andrew while cheating on Andrew's mother. Only 12 years old, [REDACTED]

[REDACTED]¹ Almost 15 years later, Andrew is still living through the emotional aftermath of his father's life and death. Andrew was raised by his mother and older sister under difficult financial circumstances, including homelessness. Today, Andrew is a caring young man with no criminal record who has accepted responsibility for his very poor decision to help Timothy Brockett sell a gun that Brockett had stolen. Considering that Andrew's criminal conduct was substantially less egregious than that of Brockett as well as the other 3553(a) factors discussed more fully below, it is respectfully requested that the Court impose a probationary sentence.

¹ Sensitive personal and medical information has been redacted from the publicly-filed documents and it is requested that the unredacted information be filed under seal. Defense Exhibit 3, which is attached, contains sensitive medical records and is submitted with a request to be filed under seal.

THE LAW OFFICES OF SEAN M. MAHER, PLLC

Page 2 of 7

1. Andrew's childhood was marked with abuse, abandonment, and loss resulting in [REDACTED]

"Rough and rugged" – that is how Andrew has described his relationship with his father Franz Smith. Franz, an owner of an HVAC company, moved out of the family home when Andrew was 8; by the time Andrew was 13, his father had died of cancer. In those short years, Andrew learned not to cross his father. Franz choked, smacked, and hit Andrew repeatedly. Franz struck Andrew with spoons, rulers, and an open hand. The physical abuse inflicted upon Andrew by his own father frequently left marks on Andrew, however Andrew hid the marks to avoid instigating additional assaults.

Franz was married to Andrew's mother, Arlene Smith. Besides their son Andrew, they had a daughter Monique, who is 10 years older than Andrew. Andrew does not remember his father ever beating Monique in front of him. Andrew does remember his mother trying to intercede to stop Franz from hitting Andrew, only to be rebuffed that Andrew had done something warranting the beating.

Besides beating his own child, Franz cheated on Arlene. "When Andrew was between 3 and 5 years old he watched our father leave in the night to go to another woman and walk away from his family," writes Monique.³ Andrew remembers his father "fought a lot" with his mother.

"We both watched our parents argue loudly many times and there were many moments when we did not know what to do other than to hang on to each other," adds Monique.⁴ "I was a teenager in high school at the time and I felt bad because this small child has no idea why his father left him and the family and is no longer with us anymore."⁵

Franz's cheating culminated in a final affair that precipitated his separation from Arlene after 25 years of marriage. "Andrew did not know if he did anything wrong or if his dad just didn't want him anymore," laments Monique.⁶ "Many times Andrew felt like he was a bother or a problem in the way of others."⁷

While Franz's infidelity was tremendously painful, Andrew and his sister eventually learned information that caused even more pain. "In later years Andrew

³ Letter of Monique Smith, attached as Exhibit 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

THE LAW OFFICES OF SEAN M. MAHER, PLLC

Page 3 of 7

and I found out that there were close family members that set our father up with this other woman and helped her take our father away and destroy our family, which has not been the same afterwards,” writes Monique.⁸ “Our mother did the best she could to take care of us or help us but for Andrew there was a tremendous amount of betrayal, abandonment, hurt, emotional pain, disappointment, depression and distrust.”⁹

Even though his father abused him, Andrew still looked up to his father and longed for his love and approval. Andrew’s relationship with his father, however, only deteriorated further once Andrew’s father moved out of the family home. Initially, Andrew would visit his father on weekends. Andrew’s father, however, began cancelling visits at the last moment, and visits occurred further and further apart. During the sporadic visits that did occur, Andrew’s father continued to find “reasons” to hit and abuse Andrew.

A few years after Andrew’s father left the family, he developed terminal cancer. As recounted by Arlene, Franz was “diagnosed with terminal cancer in January 2007 and given only” 3 to 6 months to live.¹⁰ “This was a very difficult time for Andrew,” writes Arlene.¹¹ “During his father[‘]s struggles with cancer, Andrew had to visit his father in the hospital and watched as he was suffering from extensive pain, couldn’t say, help or do anything but cried.”¹²

Andrew remembers that his father made some small steps to try to be a better parent, which Andrew yearned for, yet Andrew still harbored resentment towards his father. Unfortunately, by the time Andrew was 13, his father had passed away from the cancer.

After his father died, Andrew “became very sad, depressed and would not talk to his family or friends at times. He also showed a lack of interest in school and was very quiet most times,” recalls Arlene.¹³

[REDACTED]

⁸ *Id.*

⁹ *Id.*

¹⁰ Letter of Arlene Smith, attached as Exhibit 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Medical records, attached as Exhibit 3.

THE LAW OFFICES OF SEAN M. MAHER, PLLC

Page 4 of 7

[REDACTED]

Before Franz's death, Arlene worked as a regional manager for Kentucky Fried Chicken and was in charge of monitoring various KFC restaurants in New York City to make sure they were in compliance with applicable food, safety, and personnel standards. She worked long hours and relied on Andrew's older sister Monique to keep an eye on Andrew. As Andrew struggled after his father's death, Arlene decided that moving to Georgia where her extended family lived would be a positive change for Andrew. Coupled with finding a new job with a less demanding schedule, the move would allow Arlene to spend more time with Andrew and give Andrew other adult male role models in his life.

The plan, though well-conceived, did not pan out as Arlene had hoped. Arlene's job was more time-consuming than she thought it would be, resulting in Andrew being at home alone after school for hours at a time. Andrew's uncles did not develop a close relationship with Andrew, leaving him without an adult male family role model in his life. After about a year, Arlene lost her job. Things became so difficult financially that they lost the family house in Georgia. At that point, Arlene decided they needed to move back to New York.

Together, Arlene and Andrew moved back north to Wingdale, New York. Arlene's financial troubles, however, did not abate. She remained unemployed for about two years. Things got so bad that she lost their home, leading Arlene and Andrew to move to Connecticut.

During these relentless phases of upheaval, Andrew struggled in school. Andrew was identified as having learning issues and placed into special education classes throughout elementary, junior, and high schools. As described by his mother, Andrew "always needs extra time for everything."¹⁵ Andrew benefited from having a smaller class size with more individual attention. Even so, after the death of his father, Andrew had trouble concentrating in class and became increasingly embarrassed by his academic difficulties. After he and Arlene moved back up to

¹⁵ Quotation taken from statement made by Arlene Smith to counsel.

THE LAW OFFICES OF SEAN M. MAHER, PLLC

Page 5 of 7

New York, Andrew continued his education at Dover Plains High School. Andrew completed 11th grade but left during 12th grade because he was ashamed that he was going to be held back.

After high school, Andrew worked and continued to live with his mother. He worked as a cart man and bagger at a grocery store and as a logger at a lumber yard.

Within a few years, Arlene's financial situation deteriorated further, resulting in her losing their home again. This time, Arlene and Andrew had nowhere to live. They both became homeless for about 6 months.

For the first 3 months he was homeless, Andrew got a new job at a taxi company operated by Taxi Man LLC. Andrew slept in a dispatch office at the taxi company. When the owner found out, he began charging Andrew \$100 per week to sleep on an air mattress on the floor of the dispatch room. There were no showers there, so Andrew had to rely on going to a friend's house to wash up quickly or on borrowing his friend's Planet Fitness membership card to take showers at the gym. For the last 3 months Andrew was homeless, he joined his mother in living out of a 1995 Chevy Gladiator van.

After 6 months, Arlene and Andrew were making enough money to find a new place to live. Since then, Andrew has worked hard at jobs that have had minimal pay. He has been a taxi driver, a stower with the Amazon Truck Loading Center, a pallet maker at Buzzuto's, and a crew member at Jersey Mike's sandwich shop.

As an adult, Andrew has continued to struggle with depression and self-worth. Importantly, even with the hardships he has faced, Andrew has no prior criminal convictions.

3. The offense conduct was minimal compared to co-defendant Brockett.

The Court is aware of the criminal conduct of co-defendant Timothy Brockett.¹⁷ To summarize, Brockett and his associates burglarized and damaged two stores that sell firearms and one vape store. Among other things, they stole 5 firearms. Brockett then transferred at least 2 of the guns to other people.

¹⁷ Gov't Sent. Memo. Doc. No. 73 at 1-2, filed 3/9/2022; Brocket Sent. Memo. Doc. No. 72 at 4, filed 3/2/2022.

THE LAW OFFICES OF SEAN M. MAHER, PLLC

Page 6 of 7

It is important to distinguish that Andrew had nothing to do with any of these criminal acts committed by Brockett and his associates. Andrew did not enter the picture until after these events when Brockett picked up Andrew to drive from New Milford to Amenia in order to purchase one half a pound of marijuana. During the marijuana purchase, Andrew assisted Brockett in selling one of the firearms Brockett possessed to the person who sold the marijuana.

4. Andrew is an excellent candidate for a probationary sentence.

As reflected in the Guidelines calculation stipulated by the parties and adopted by the Probation Office, Andrew's Guidelines range is 12 to 18 months, which is one of the lowest possible ranges. Unlike so many federal offenses, a probationary sentence is statutorily permissible.

Andrew has accepted responsibility for his actions. In fact, as soon as Andrew was arrested, he waived his *Miranda* rights and told law enforcement officials everything that he knew and did. Andrew, through counsel, informed the government early on that he wanted to accept responsibility and resolve the case as expeditiously as possible. To that end, Andrew waived indictment and consented to entering a guilty plea to an information filed by the government. Every day he regrets that agreed to help Brockett and will never do anything like that ever again.

While on pretrial release for the last 19 months, Andrew has remained law abiding and hard-working. He has maintained employment. Currently, Andrew works full-time for TruGreen in Danbury, Connecticut, doing lawn care and maintenance.

Besides abiding the law while on pretrial release for more than a year and a half, Andrew has no prior criminal convictions. Andrew is 26, soon to be 27. That he has lived to be almost 30 with no criminal convictions reflects positively that he will not recidivate.

For those that know him, especially his mother and his sister, Andrew is a sensitive, caring, thoughtful human being who is a good person. As his mother knows, "Andrew is a very loving, happy, caring and friendly individual." Monique shares that "Andrew has done a lot for our mother and always try to help others."

This is a situation where imprisonment is not necessary to meet the goals of federal sentencing. Probation with a felony record is sufficient punishment and provides more than adequate specific and general deterrence.

THE LAW OFFICES OF SEAN M. MAHER, PLLC

Page 7 of 7

Conclusion

In light of all of the 18 U.S.C. § 3553(a) factors before the Court, it is respectfully requested that the Court impose a sentence of probation.

Respectfully submitted,

/S/
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